



# *Fairness in global trade – What is at stake?*

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## **Specific objectives**

A tendency in contemporary global governance in general and the governance of international trade in particular is a deepening concern for *fairness*. That fairness matters in trade negotiations, and especially in the multilateral framework, is well-established in current research. This is the point of departure for this study. The more pressing research-question is how to make sense of claims about justice and fairness and what to think about them from a philosophical and normative point of view. Accusations about lack of fairness seem to frequently contradict each other. It is important to scrutinize the rational and moral basis for these claims. This project is a contribution towards that objective

In the *first* part of the project, *the concept of fairness* and its multitude of meanings in contemporary discourse are analyzed. What can it mean for trade to be fair? Fair to whom? What are the morally and philosophically relevant considerations we need to take into account when thinking about justice and fairness in trade? What is it that people (or states) are supposed to be fairly entitled to in the global trading economy, and why?

The *second* part is *normative*, seeking to develop the insights into what trade policies can be said to be fair or unfair, just or unjust. What policies and institutional designs would follow if we were more clear and rigorous about the meaning of justice and fairness in trade?

In the third part of the project consists of three case-studies that focus on fairness

in trade: *agricultural subsidies*, the rules of *multilateral institutional trade-framework* (WTO), and *fair trade labeling*. These cases are chosen based on their controversy and because they constitute particularly difficult cases to think about in terms of fairness.

## **Overview – previous and current research**

There has been an increasing interest among political scientists and some economists in recent years in the role played by justice and fairness in international negotiations. More broadly, an expanding body of empirical work indicates that states are influenced by fairness-considerations in their strategic interactions, contradicting traditional approaches to multilateral negotiations which emphasize the role of power and bargaining between self-interested parties. It is assumed that outcomes will reflect the relative distribution of power, on one hand, and the relative utility of reaching an agreement, on the other.

Cecilia Albin has persuasively argued that norms of fairness enable and shape negotiations on a wide assortment of issues, ranging from disarmament to trade-negotiations (Albin 2001). As pointed out by Albin, issues of fairness lie at the heart of a number of contemporary international policy areas such as climate change, environmental policy, economic integration, development and national self-determination (Albin 2001:2). Illuminating the role of fairness in multilateral policy-making is thus relevant to a broad range of issues in international politics. Great powers

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do, as a matter of empirical fact, adopt fairness considerations in international trade agreements, and in particular the norm that trade should work to the benefit of the poor. Fairness operates to *constrain* bargaining aimed at mutual advantage. Albin observes that “[e]conomic interests go a long way to explain the endorsement and influence of many conceptions of fairness in the Uruguay Round.” Negotiators sought to emphasize norms and interpretations of norms that would serve their own interest, and this was reflected in the final agreements reached. (Albin 2001:138) However, in the early stages negotiators tended to emphasize narrow interests but as the process continued these interests were modified and expanded by notions of fairness and addressing and balancing the concerns of all parties involved (Albin 2001:228).

In economic game theory, experiments with so called Ultimatum Games indicate that adoption of fairness-considerations may be crucial to achieve and maintain cooperative schemes, modifying the explanatory power of traditional game theory and liberal institutionalism which tends to rely on iterated Prisoners’ Dilemma as its basic model (Kapstein 2008:7) or variants of hegemonic stability theories. This indicates that co-operation is feasible without iteration or hegemonic dominance, and that dominance may not be sufficient to assure stability of agreements that have been reached if they are perceived to be unfair. Instead, perceived fairness may be a necessary attribute of robust co-operative systems (Ostrom 2006).

Indeed, the WTO Doha-round ministerial meeting in Hong Kong in 2005 demonstrates the salience of fairness-related issues. In previous negotiation-rounds positions had primarily been justified by reference to economic factors such as growth. The Uruguay-round, on the other hand, involved many more references to fairness in order to justify claims (Albin 2001:139). The current debate on fairness in the WTO seems to focus on the

following issues:

- What should trade agreements regulate? Particularly controversial are regulation of investments and trade in direct investments and essential services. The TRIPS-agreement, WTO’s agreement on intellectual property, is particularly controversial since it clashes with the public-goods-preferences for many countries, especially in the area of health care (cf Brown/Stern 2007).
- An exchange of goods must not involve one party receiving less than the “fair value” for the goods that they provide. Prices should not be exploitative or deny producers a fair standard of living. This appears to be a crucial factor for the “Fair Trade”-movement.
- It is frequently argued that traded goods must be produced under fair conditions, not involving slavery, (the worst forms of) child labor, severe environmental damage and so on. There is an effort by developed countries to enforce ILO labor standards as part of the WTO framework, while the developing countries strongly reject this idea as it would allow developed countries to impose barriers on goods in which the labor-abundant developing countries enjoy comparative advantage (Baldwin 2006:687).
- Should countries be permitted to protect their own industries when doing so might “harm” workers in other countries, and if so, under what circumstances? All states engage in extensive policies that strengthen the competitiveness of their industries by providing infrastructure, education, research etc, so the conflict is about what actually qualifies as “protection” and not.

Further complicating these issues is the difficulty of ascertaining what the impact of different trade policies actually are. For example, Joseph E. Stiglitz and Andrew Charlton have proposed a “fairness constraint” on trade negotiations in the WTO: a larger share of

benefits should accrue to the poorer countries, and benefits can be measured by net gains as percentage of GDP (Charlton/Stiglitz 2005). Such constraints, however, make it impossible to say that a trade arrangement is fair unless we can assess the *results* of such trade in both the short and long perspective, which may be a difficult thing to do. The research on how trade interacts with growth and economic development, for example, suffers from many empirical and theoretical problems (cf Rodriguez/Rodrik 1999). Another example of this difficulty is the critique against agricultural subsidies by wealthy countries, such as the CAP in the European Union. Some argue that the net impact of agricultural subsidies is highly detrimental for developing states, constituting a major injustice inflicted by the wealthy on the poor (Pogge 2001, Anderson/Martin 2006). In contrast, others have argued that the impact of agricultural subsidies on world poverty is highly exaggerated (Tokarick 2003, Birdsall et al 2005).

In the field of political theory there is a rapidly growing literature on *global economic justice*, but trade itself as a phenomenon has received surprisingly little attention from political philosophers. Political theory has usually focused on distributive issues within societies viewed as more or less isolated from the surrounding world, with trade as a secondary concern at best. Only quite recently has principles of distributive justice been “extended” to the global arena. In this field there appears to be a stalemate between cosmopolitan-egalitarians who see “global interdependence” as sufficient to generate distributive effects that should be governed by global principles of justice (for versions of these arguments, see Beitz 1999, Pogge 2001, Caney 2005) and a range of views that may be labeled nationalist or institutionalist who see international trade as insufficient to warrant concerns for distributive justice, except in purely humanitarian terms (c.f. Rawls 1999 and Nagel 2005). The latter category of

theorists argue that justice only applies within a coercive institutional framework and that trade should be seen as voluntary “pure contracts” for mutual advantage, not triggering concerns for redistribution of the gains from co-operation. Hence they pay very little attention to trade fairness, presumably regarding it as a legal issue (or more charitably an issue of procedural fairness). Cosmopolitans like Beitz on the other hand seem to regard *all* trade, fair or not, as grounds for distributive justice as long as it affects the distribution of burdens and benefits. As a consequence these theories provide scarce guidance when it comes to institutional design and don’t contribute much to our understanding of trade fairness as such (with only a few exceptions, c.f. Risse 2005 and Suranovic 1999). Even worse, were such views to be implemented as policy it might give an incentive to dramatically restrict trade. For others (cf Pogge 2001), unfair trade constitutes harmful behavior that violates negative duties not to harm the global poor and to compensate them for this harm. In this kind of argument fairness plays a more pivotal role but it is simplistically taken for granted that restrictions on trade constitute harm.

Fairness in global trade has also received surprisingly meager analysis by academic economists. Economists emphasize the link between trade and well-being, poverty reduction and (perhaps more controversially) growth while proclaiming the innocence of trade with regard to environmental, social and political problems (c.f. Bhagwati 2002). Such economists tend to be dismissive of fairness-claims in trade politics, seeing fairness-based policies as rationalization of selective protectionism that is harmful to global welfare. The study of trade and tariff policy by political economists has tended to focus heavily on special interest groups from a public-choice perspective. Accordingly, political economists often dismiss fairness-talk as neo-mercantilist thinking where the objective of states is to maximize net exports while keeping imports

in check (hence trade liberalization is thought of as “concessions”) (Odell 2000). Fairness is also an elusive concept that is difficult to quantify and measure, hence often regarded as “unscientific” by economists, as opposed to concepts like efficiency and growth. Given the emerging research on the importance of fairness, this could be seen as a major shortcoming of international economic theory.

### Project description

This project proceeds from the assumption that fairness in trade is a multidimensional and highly complex phenomenon that requires analysis at many different levels. Indeed, the very complexity of trade and its impact on individuals, society, global development and poverty perhaps helps explain why political theorists have paid so little attention to this phenomenon, preferring to remain in the domain of “ideal” theory by either pretending that states are isolated from each other except at the margins, or by using catch-all terms such as interdependence instead.

In the project's first part, a conceptual framework will be developed for making sense of the various claims of fairness in the contemporary debate. This step is necessary in order to clarify the various dilemmas and trade-offs that are necessary when thinking about what constitutes fair trade-practices. A draft for this framework is presented below.

In the second part, the project moves from conceptual analysis to normative theory. Instead of departing from a single normative framework such as liberal egalitarianism, the project will use a pluralistic, problem-oriented approach seeking to anchor its analysis in several different, reasonable normative perspectives. The method used will hence be *eclectic*, aiming for conclusions that can be normatively appealing to proponents of different theories of global justice. The important normative questions that will be discussed are:

- Do states have a right to regulate and restrict trade, and if there is such a right, what does it entail for just and fair trade practices?
- Is “market access” a moral obligation, and if so under what circumstances?
- What does it mean for an exchange to be fair? Can unfair and unjust circumstances arise from fair exchanges?
- Is there a “fair price” for a product?
- Are states (individuals) entitled to an equal opportunity to trade? If so, what should be done to enable states (individuals) to trade?

The relevant points of reference for addressing these questions are the theoretical literature on global justice and national self-determination, on one hand, and the empirical economic literature on the impacts of various trade-policies on the other. The primary aim is *to clarify what is at stake* from a moral point of view and to distinguish between strong and weak, poorly supported arguments in the fairness-debate, not necessarily to arrive at a definite solution to all fairness-problems in trade – due to the complexity of trade-related issues I don't believe that such general solutions can be found and that fairness must be considered contextually on a case-by-case basis.

This brings the project to the third part, where I apply the conceptual and normative framework in three case-studies, chosen because of their controversy and because of the frequent claims about fairness and unfairness made. The case-studies will be based on critical engagement with frequently advanced claims and arguments about fairness in both the popular and the academic debates about the issues, as well as arguments advanced by various interest groups and NGO:s such as Oxfam and International Fair Trade Association as well as IGO:s such as the World Bank. These arguments will constitute the material for the studies. The method employed might be labeled “critical argumentation analysis”.

The three cases will be:

- Agricultural subsidies and various forms of protection used by wealthy countries to reduce competition for domestic farmers, such as the Common Agricultural Policy of the EU. What are the consequences of such protectionism, and how should these consequences be analyzed in terms of fairness?
- The rules of the multilateral trade-framework, the World Trade Organization. Focus will be on the most controversial aspects of the trade-rules, such as what constitutes “unfair” competition-practices by states and the struggle over regulations of child labor. Particular focus will be placed on the widespread claims that the framework is unfair to developing countries. Is this true and in that case what should be done to reform it?
- Fair-trade labeling of products and fair-price guarantees offered to producers provided they meet particular labor and production standards. In what sense are such systems fair? What are the impacts of fair-trade labeling and consumption in improving the fairness of trade?

### Significance

There has been a lot of research into the role played by conceptions of fairness in the international trade and public policy literature, mainly because the concept is so common in trade debates – indeed, unavoidable. But strikingly, there are few discussions of what it *means* for trade to be fair in the literature, and little analysis of how different fairness-claims relate to each other. Given the salience of the idea that trade should be fair, this is a significant shortcoming of contemporary political theory and it also contributes to confusion about how trade fits into the more overarching concern for global justice.

The project is relevant both for the wider research area of global governance as such and the role that norms play in governance,

and for the rapidly expanding normative/philosophical field of global justice. The project seeks to move beyond existing research by bridging a divide between political theory and the debate on global justice, on one hand, and the political-economic literature on trade liberalization and regulation, on the other. This divide creates a theoretical gap that causes trade fairness to be a very under-theorized and underexplored concept.

Membership in GATT/WTO is “voluntary” and decisions are made by mutual consent, usually respecting the consensus rule. Thus, if there is not a consensus about fairness of the rules and procedures of the trade regime, states will not willingly abide by them for long. Fairness must therefore be seen as integral to the functioning of the system as such. Although co-operation with the global trade regime is hardly as “voluntary” in reality as it is on paper, and although powerful states are certainly more influential and less forced to accept compromises than weak ones, it is likely that the co-operative nature of the global trade regime would collapse if the norms of fairness and reciprocity were continuously violated. Arguably, the lack of progress in the current round of trade negotiations is largely due to deep disagreements about fairness. There is a distinct possibility that the multilateral trade regime will be largely replaced by a complex set of regional and bilateral trade agreements due to the increasing difficulties in reaching multilateral consensus. This makes fairness an intriguing and important field of study.

Furthermore, many products that we today buy as consumers are labeled as “fair trade”, but it is rarely explained what this label stands for, why buying such products is conducive to fairness and if so, fairness in what way. The project can help clarify and illuminate some of these issues.

### Preliminary results

Here, I briefly sketch the preliminary outline

for the conceptual analysis-part of the project. In the debate about fairness in trade, I think that five different and only partly overlapping conceptions of fairness can be identified. These are:

- Fairness as impartiality – the norms and rules of trade should be applied in a neutral, non-biased way
- Fairness as reciprocity – partners in trade should reciprocate and treat each other as they are treated, and vice versa (e.g. tit-for-tat or Golden Rule-reciprocity)
- Fairness as equity – partners in trade should benefit equally from trade
- Fairness as equal opportunity – trade should be a “level playing field” by removal of obstacles to pursue wealth, development etc.
- Fairness as priority – trade should be organized in such a way as to primarily benefit those in need.

These fairness-concerns can be analyzed at three different levels (cf. Kapstein 2004, 2007). The first focuses the impact of trade, investments and financial transactions on *domestic distributive justice*, the main concern being changes in income distribution and economic power within the political community. It is well-known that trade creates “winners” and “losers” in domestic society, and the crucial question from this perspective is how fair and just these changes are to the “losers” and how they can be protected and/or compensated. From this perspective, critics of trade liberalization often argue that it has contributed to increased wage-gaps. Furthermore, there is a concern that economic openness will undermine the ability of the state to protect and compensate the economically disadvantaged by “rolling back” the welfare-state. Crucial notions of fairness at the domestic level appear to be *fairness as equity* and *fairness as priority*.

The second level focuses on fairness in the “*society of states*” and the rules for governing the global order. This perspective is on one hand concerned with *procedural* fairness (or

*fairness as impartiality*) – are the rules of multilateral international trade and exchange fair and equally acceptable for all states? Also crucial is *fairness as equal opportunity* – is multilateral trade a “level playing field” or are the rules “rigged” in favor of some (powerful/wealthy) states? That member countries should refrain from “unfair” trading practices is an integral part of the GATT/WTO-process. A narrow interpretation of *fairness as impartiality* was adopted in articles I and III of the GATT in the form of non-discrimination (Most-Favored-Nation-status) and national treatment on a quid-pro-quo basis. Other examples of fairness-based rules are the anti-dumping rules in Article VI or Article XX allowing countries to make exceptions for prison labor, and the Agreement on Subsidies and Countervailing Measures. But there is also a concern for *fairness as equity* in the GATT/WTO, the idea that trade should promote economic development. This is most visible in allowances for preferential trade agreements, the so-called General System of Preferences. The “Enabling Clause” of 1979 permits preferential tariff and non-tariff treatment that allowed privileged market access for developing countries. Declarations during both the Uruguay- and the Doha-rounds have continually urged “special and differential” treatment for developing countries, especially the least developed ones, and developed countries are usually given extra time to conform to GATT/WTO-rules. However, it has frequently been pointed out that there are important biases in the trade barriers of developed countries against imports from developing countries, most obviously in the area of agriculture (Narlikar 2006).

The third level is *cosmopolitan-individualist* and focuses how the *well-being and human rights* of individuals are affected by the forces of economic globalization (in particular the most vulnerable individuals, i.e. the global poor). To the extent that patterns of trade and exchange foreseeably and avoidably engenders poverty and harms the

life-prospects of the poor, the policies and institutional arrangements that support such patterns must be regarded as unfair and unjust. From this development-perspective, it could be argued that a trade regime shouldn't harmonize national policies (as perhaps indicated by *fairness as impartiality*) but allow for national autonomy in order to allow flexible and diverse development strategies, as suggested by *fairness as priority*. This applies to the principles of non-discrimination and reciprocity as well. Special provisions are needed to ensure food security and basic social services for the global poor, for example, and trade arrangements must be instrumental towards these objectives.

A difficult question here seems to be what fairness requires in terms of *enabling* countries to gain from trade, even when they currently are not doing so. This illustrates an important distinction between narrow conceptualizations of fairness and wider conceptualizations. On a narrow definition, fairness applies to those who participate in trade and the regulatory regimes themselves. On a wider definition, fairness is concerned with the conditions under which nations (and individuals) can gain from trade in the first place. In terms of the “level playing field”-metaphor, the narrow definition applies to *current* players whereas the wide definition applies to *potential* players as well, bringing them “into the game” in order to allow them to gain from trade on equitable terms.

A further dimension has to do with *procedural* fairness vs *outcome* fairness. In an ideal world, a fair procedure would result in fair outcomes. But equal and non-discriminatory treatment on the “playing field” may of course yield quite different outcomes for different players depending on their initial starting points – some may gain a lot while others may gain very little. In contrast to procedural fairness, outcome-based conceptualizations assume that regulations of trade are fair if they promote worthwhile objectives, in particular promoting economic development. In

such cases, discriminatory policies may promote fairness.

These concerns yield a highly complex structure of fairness-concerns, in terms of i) what fairness *means*, ii) at what *level* fairness is applied and iii) whether fairness is thought of in *procedural/outcome*-, *wide*- or *narrow terms*. This complicated structure helps explain why genuine concerns about fairness in trade frequently clash, e.g. in the WTO-negotiations wealthier and more powerful states frequently use to term to signify impartiality at the state-level, in narrow, procedural terms. Developing countries, on the other hand, frequently advocate a notion of fairness that is based on equity, priority or equal opportunity, at both the state- and the cosmopolitan level, in wider, outcome-based terms. It is easy to see why such different conceptualizations of fairness can lead to drastically different policy-recommendations and rules.

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